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In the Supreme Court of the United States

OCTOBER TERM, 1941

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INDIANA & MICHIGAN ELECTRIC COMPANY, AND MICHIANA ELECTRICAL UTILITY WORKERS ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

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INDIANA & MICHIGAN ELECTRIC COMPANY, AND MICHIANA ELECTRICAL UTILITY WORKERS ASSOCIATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Sixth Circuit entered on December 12, 1941 (R. 866), insofar as that decree failed to enforce the Board's order issued against Indiana & Michigan Electric Company and remanded the cause to the Board with directions to hear and consider certain additional evidence as herein stated.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 866–876) is reported in 124 F. (2d) 50. The

findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 140–170) are reported in 20 N. L. R. B. 989.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on December 12, 1941 (R. 866). An order extending the time within which to file a petition for a writ of certiorari to and including April 11, 1942, was signed by a justice of this Court on March 9, 1942 (R. 887). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Board lacks jurisdiction to hear a case if the charge is filed by a labor organization which has engaged in unlawful conduct, and can be required to hear evidence of such unlawful conduct to establish whether or not it lacks jurisdiction.

2. Whether the court below acted arbitrarily in remanding the case to the Board in order that the testimony of three witnesses, which was cumulative or immaterial, might be impeached.

3. Whether the order of the Board was supported by substantial evidence.

STATUTE AND RULES INVOLVED

The pertinent provisions of the National Labor Relations Act and of the Rules and Regulations of the National Labor Relations Board are set forth in the Appendix.

STATEMENT

Charges and amended charges (R. 30–31) having been filed by International Brotherhood of Electrical Workers, Local B–9, a labor organization affiliated with the American Federation of Labor and herein called the Brotherhood, the Board, on November 12, 1938, issued its complaint against Indiana & Michigan Electric Company, herein called the respondent (R. 32–35). The complaint alleged, in substance, that respondent had initiated, interfered with, dominated, and supported Michiana Electrical Utility Workers Association, a labor organization herein called the Association, and had in various ways discouraged membership in the Brotherhood, thereby violating Section 8 (1) and (2) of the Act.[1] Respondent filed an answer denying the material allegations of the complaint (R. 38–40).

A hearing was held before a trial examiner of the Board from November 28 to December 9,

[1] The complaint also alleged that respondent had discharged an employee, Elkins, contrary to Section 8 (1) and (3), but this allegation was dismissed by the Board (R. 33–34, 166, 170).

1938.[1] On July 27, 1939, the examiner issued an intermediate report finding that respondent had violated Section 8 (1) and (2) of the Act and recommending certain remedial action (R. 53–92). Respondent filed exceptions (R. 93–129) and a supporting brief, and engaged in oral argument before the Board on November 9, 1939 (R. 130, 139). Thereafter, on February 19, 1940, respondent filed a petition requesting the Board to reopen the case and receive further evidence concerning certain crimes allegedly committed against respondent's property by officers of the Brotherhood and men in their employ (R. 130–135). This evidence was proffered in order to show that the Board proceeding did not involve "a bona fide and good faith controversy * * * with reference to unfair labor practices committed by respondent" (R. 131), and also to show that three of the persons who had testified for the Board at the hearing were involved in the crimes and therefore were unworthy of belief (R. 130–131, 133–134).

On February 28, 1940, the Board issued its decision denying the foregoing petition (R. 139) and

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[1] An attorney for the Association, which was not served with process, was present at the hearing although he did not enter his appearance on the record (R. 136n., 632, 634–635, Orig. Trans., p. 3). Since the Association was found to be employer-dominated, it "was not a necessary party" to the proceeding, as the court below correctly held (R. 872). *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350.

setting forth its findings of fact, conclusions of law, and order (R. 140–170). Omitting jurisdictional findings, the facts as found by the Board and shown by the evidence may be summarized as follows:[3]

In April 1937, when the Brotherhood actively attempted to organize respondent's employees, a widely publicized meeting of the Brotherhood was subjected to the surveillance of two of respondent's supervisors, General Line Foreman Livelsberger and Assistant General Line Foreman Carlton (R. 142–143; 180–182, 277–278, 348–350, 480–481, 576–578).[4] Transmission Crew Foreman Harter thereafter interrogated the employees in his crew about this meeting and by "drilling away" at them caused them to "admit" they were there; Harter sought also to discover "how many was to the meeting and * * * the names of different ones that was there" (R. 143–144; 521–527). Harter then undertook the organization of an inside unaffiliated union, the Association, primarily as a means of opposing the outside union campaign, and sought the assistance of other foremen in this undertaking[5] (R. 144–145, 164; 512–

[3] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

[4] The supervisory status of the various employees referred to in this discussion and respondent's responsibility for their acts are discussed *infra*, pp. 8–10.

[5] As Harter admitted, he enlisted the other foremen as fellow-organizers because "your men look to the foreman as a leader" (R. 515–516, 530).

516, 530, 490–491, 498–499). He arranged for a preliminary meeting, attended by Distribution Engineer Miles and Line Foremen LaVelle, Clark, and Daniels, at which, after discussion of the progress being made by outside unions, a campaign for the Association's organization was mapped out (R. 145–146; 490–496, 498–499, 502, 517, 533, 536–539). Additional supervisors, Assistant General Line Foreman Carlton, Transmission Engineer Henderson, and Acting General Line Foreman Edgell, participated in the work of organization by holding a meeting, along with several non-supervisory employees at Henderson's home on May 19, at which a petition for recognition of the Association was drafted and arrangements were made to retain an attorney and to hold a mass meeting on the following day (R. 146–147; 199–203, 265–266, 281–285, 392–396, 567–570). At this mass meeting, which had been widely advertised by many of respondent's foremen, the 600 employees who attended voted to form the Association, adopted the petition, and elected respondent's safety engineer, Holmes, as temporary chairman (R. 147–149, 164; 221, 262, 303–304, 352, 396–399, 410, 719–722). Thereafter Holmes, with a committee which included various foremen, drafted the organization's bylaws (R. 149–150, 164; 228, 230–234, 708–717, 797–809).*

* The bylaws committee which itself, as stated, included various foremen, decided that foremen should be eligible

After the adoption of the bylaws on June 11, 1937, the Association held elections at meetings, two of which were presided over by Holmes and Henderson; supervisors were elected to various subsidiary posts, and Holmes, Edgell, and Meter Foreman Denman were chosen to serve as three of the four officers of the Association's General Council, its governing body (R. 150–151, 164; 689–690, 697–708).

On May 22, 1937, prior to the adoption of the bylaws, a committee on which Carlton and Henderson served had presented the petition for recognition of the Association to respondent's officers; the committee was assured that the Association would have no difficulty in getting a contract (R. 149, 164; 385–386, 717–719). Although respondent had originally suggested that the Association's majority representation be proved by an election, immediately upon learning that the organization's status was being questioned by the Board, respondent, on September 28, 1937, recognized it as the exclusive bargaining representative simply upon its secretary's affidavit that it represented a majority (R. 151–152; 243–244, 671–673, 826–830). Thereafter,

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for membership in the Association, but cautioned that they ought "not take too active part * * * so as to make men working under them feel that the union was run by higher-ups" (R. 150, 162; 710). The bylaws also require all disputes with respondent to be settled by arbitration and without work interruption (R. 808).

respondent negotiated with the Association concerning the latter's proposals, prepared largely by Holmes, one of which was a provision for a 15-percent wage increase (R. 151, 152–153, 164; 228, 239–240, 816–825, 833–846); as a sales argument, the Association pointed out to respondent that unless action were forthcoming, the Association would "be a flop," and that a "lot of men [were] much more favorable to other organizations" (R. 153, 164–165; 846).[1] In February 1938 respondent entered into an agreement with the Association, which was substantially the same as a "Declaration of Policy" which respondent submitted in December 1937 (R. 153–154; 237–239, 648–654, 790–796). The grievance machinery under the agreement, as well as under the Association's by-laws, was such that respondent through its foremen was in effect represented on both sides of the bargaining table (R. 162, 164; 794, 802).

Throughout this entire period, various supervisors solicited membership for the Association, collected dues, and became members themselves in large numbers (R. 145–146, 148–149, 154, 155, 157, 158–159, 162, 165; 211–212, 278–279, 317, 321–323, 353, 356, 495–497, 503, 569, 582, 738–785).

The foremen, engineers, and other supervisory personnel who thus participated in the campaign

[1] Respondent, in order to bolster the Association, later offered and the Association accepted a blanket 5-cent-per-hour wage increase (R. 153, 165; 660–661, 666–667).

against the Brotherhood and the development of the Association were, the Board found, representatives of management for whose activities respondent is chargeable (R. 154–163).

Three of them, General Line Foreman Livelsberger, Transmission Engineer Henderson, and Safety Engineer Holmes, are outranked in authority only by respondent's vice president, assistant secretary, and superintendent of transmission and distribution (R. 154–156, 157; Resp. Exh. 17,* R. 220, 451–452, 460, 462); Livelsberger had charge of 88 men including all the crew foremen and their subordinates (R. 157, 160; Resp. Exh. 17, R. 447, 455, 463–464, 565), Henderson had engineers subordinate to him, as well as a crew of men (R. 155; 407–408, 457–459), and Holmes inspected the employees' compliance with safety regulations and reported violations thereof (which constituted cause for discharge), in addition to conducting safety meetings among the line crews and representing respondent at safety congresses (R. 156, 157; 217–221, 249–250, 462). Assistant General Line Foreman Carlton was assistant to Livelsberger, with four foremen and their crews under him (R. 157–158, 160; Resp. Exh. 17, R. 446–447, 455, 467, 566). Miles was distribution engineer for the South Bend Division, with several engineers under him (R. 156; Resp.

* The original exhibit is on file with the Clerk of this Court.

Exh. 17, R. 454–455, 536–537). The crew foremen, including Harter, LaVelle, Clark, Daniels, Denman, and Edgell (the latter was acting general line foreman for the Benton Harbor Division), headed crews of as many as 10 men, over whom they had "complete authority"; they were the "key employees" on whom the "success or failure" of respondent's personnel policies depended (R. 158–161, 162; Resp. Exh. 17, R. 192–193, 214, 392, 422, 468–477, 488, 512, 533, 584–585).

Upon the foregoing findings of fact, the Board concluded that respondent had dominated, interfered with, and supported the Association in violation of Section 8 (2) of the Act, and had in this and other ways violated Section 8 (1) (R. 143, 144, 165–166, 168–169). Its order required respondent to cease and desist its unfair practices, to disestablish the Association, and to post notices (R. 167–168, 169–170).

On December 13, 1940, the Board petitioned the court below for enforcement of its order (R. 1–5). The Association was permitted to intervene (R. 863–865, 868–869). On July 29, 1941, respondent filed with the court below a petition, under Section 10 (e) of the Act, asking that the case be remanded to the Board for the taking of substantially the same additional evidence as that which respondent on February 19, 1940, had requested the Board to receive and which request the Board had refused (R. 852–855; *supra*, p. 4). On August 29,

1941, the Board filed an opposition to respondent's said petition (R. 855–863). On October 17, 1941, the court passed the disposition of the petition to the argument on the merits of the cause (R. 863). On December 12, 1941, the court handed down its opinion and on the same day entered a decree which failed to enforce the Board's order and remanded the cause to the Board with directions to hear and consider additional evidence concerning the destruction of respondent's property by the Brotherhood or its agents or representatives (R. 866–876). The Board's motion to file a petition for rehearing out of time was denied on March 5, 1942 (R. 877–887). On March 9, 1942, Mr. Justice Reed extended to April 11, 1942, the Board's time in which to file a petition for certiorari (R. 887).

SPECIFICATION OF ERRORS TO BE URGED

1. The court below erred in remanding the case to the Board for the taking of additional evidence as to the unlawful conduct of the union which filed the charge against respondent.

2. The court below erred in remanding the case to the Board in order that the testimony of certain witnesses might be impeached.

3. The court below erred in failing to enforce the order of the Board.

REASONS FOR GRANTING THE WRIT

1. The court below remanded the proceeding to the Board to hear and consider additional evi-

dence relating to the destruction of respondent's property by the Brotherhood or its agents or representatives (R. 876). It held that such evidence was material to establish whether the Brotherhood was a labor organization capable of acting as a bargaining representative for employees, that only such a labor organization (or an employee) was entitled to file a charge with the Board, and that in the absence of a charge filed by such an organization or employee the Board lacked jurisdiction to issue a complaint in or hear the case (R. 872–875). In brief, the court below held that the Board lacked jurisdiction to proceed upon a charge filed by an organization which could be shown to have engaged in unlawful conduct.

This holding finds no support in the terms of the National Labor Relations Act or elsewhere. The Act empowers the Board to proceed "whenever it is charged that any person has engaged in or is engaging in any" unfair labor practice (Section 10 (b)), but in nowise restricts the class of persons who may file a charge. The Board's Rules and Regulations, adopted pursuant to Section 6 (a) of the Act, have at all times permitted a charge to be filed "by any person or labor organization" (Rules and Regulations of the National Labor Relations Board, Article II, Section 1, *infra*, p. 21).

The legislative history likewise indicates that the limitation imposed by the court below should not be read into the statute. The report of the

Senate Committee shows that Congress deliberately rejected proposals to regulate the conduct of unions and to prohibit fraud or violence on their part; the committee declared that other remedies against such acts were adequate and available outside the Act, and that "the only results of introducing proposals of this sort into the bill * * * would be to overwhelm the Board in every case with countercharges and recriminations that would prevent it from doing the task that needs to be done." Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 16–17, also incorporated in H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 16–17. The decision below directs the Board to investigate asserted misconduct of the charging union as a prerequisite to the taking of jurisdiction, thus requiring the Board to look into as a preliminary matter what Congress did not intend to come within the Board's province at all. It is also of some significance that at the hearings before the Senate Committee, Senator Wagner, the sponsor of the Act, strongly objected to a suggestion that a limitation be imposed upon the classes of persons who could lodge complaints with the Board. Hearings before Senate Committee on Education and Labor, 74th Cong., 1st Sess., on S. 1958, Part 3, pp. 439–442.[9]

[9] The Attorney General's Committee on Administrative Procedure, which made a comprehensive study of the National Labor Relations Board and of other administrative agencies, has flatly stated that "no limitations have been im-

Nor is there justification in policy or in reason for the limitation imposed by the court below on the class of those who may file a charge. The purpose of a charge is simply to inform the Board of the existence of alleged unfair labor practices of employers and, since the Board does not initiate the proceeding through the issuance of a complaint until the charge has been thoroughly investigated, there is no reason for restricting the class of those who may file the charge. Cf. *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 42 (C. C. A. 6).

2. Although no other decision deals specifically with the effect of union misconduct upon the union's right to file a charge with the Board, or the Board's jurisdiction to hear such cases, a number of decisions in this Court and other circuit courts of appeals conflict in principle and in result with the decision below. *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *Southern Steamship Co.* v. *National Labor Relations Board*, No. 320, this Term, decided April 6, 1942; *National Labor Relations Board* v. *Hearst*, 102 F. (2d) 658, 661, 663 (C. C. A. 9); *National Labor Relations Board* v. *Remington*

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posed, either by statute or by the Board's ruling, on the classes of persons who may file charges." *Administrative Procedure in Government Agencies, Monograph of the Attorney General's Committee on Administrative Procedure, Part V, National Labor Relations Board*, Washington, Gov't Printing Office, 1941, p. 3.

Rand, Inc., 94 F. (2d) 862, 872–873 (C. C. A. 2), certiorari denied, 304 U. S. 576; *Wilson & Co.* v. *National Labor Relations Board*, 103 F. (2d) 243, 244, 251 (C. C. A. 8); *Tyne Co.* v. *National Labor Relations Board*, decided February 20, 1942 (C. C. A. 7).[10] In these cases the courts enforced Board orders despite asserted misconduct of the union which had invoked the processes of the Board by filing a charge. Thus in the *Fansteel* case, although the charging union and the employees were found to have engaged in unlawful conduct of a serious character, this Court nevertheless enforced the provisions of the Board's order requiring the company to cease and desist from certain unfair labor practices and to disestablish the company-dominated union. Similarly, in the *Southern Steamship* case, the Court's enforcement of certain portions of the Board's order proves that the Board had jurisdiction despite the employees' violation of law. In the *Remington Rand* case, *supra*, the court expressly held that it was no defense for the employer to assert that the charging union had "disqualified itself by its own misconduct from appeal-

[10] See also *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 146 (C. C. A. 9), certiorari denied, 304 U. S. 575; 99 F. (2d) 533, 540, certiorari denied, 306 U. S. 646; *International Association of Machinists* v. *National Labor Relations Board*, 110 F. (2d) 29, 39–40 (App. D. C.), affirmed, 311 U. S. 72; cf. *National Labor Relations Board* v. *Blanton Co.*, 121 F. (2d) 564, 568–569 (C. C. A. 8).

ing to the Board"; the court stated that "though the union may have misconducted itself, it has a locus poenitentiae." If the view of the court below in this case had prevailed, the Board would have been without jurisdiction to hear any of the above cases.

3. Review of the decision below is of obvious importance in the administration of the Act. If the decision is permitted to stand, employers will in all cases seek to compel the Board to hear evidence with respect to the past misconduct of the charging union as a prerequisite to the taking of jurisdiction. Any such result will greatly hamper the work of the Board and divert its energy to matters which Congress deliberately sought to exclude from the scope of its activity. Furthermore, it will permit employers who are violating the National Labor Relations Act to continue to do so free of the sanctions of the Act whenever the organization which happened to file the charge was itself guilty of misconduct.

4. The court below also sought to justify the remand on the ground that it might result in impeachment of the credibility of three of the Board's witnesses (R. 873–874, 876). Since the testimony of these witnesses was either cumulative (being corroborated by respondent's witnesses) or immaterial and not relied on by the Board,[11] the

[11] The court below states that the testimony of three witnesses, Samuel Guy, John R. Marks, and Earl Freeman,

court below acted arbitrarily and abused its discretion in remanding the case for this purpose.

The remand on this ground would also appear to conflict with the rule that "newly discovered evidence merely to contradict a witness is not sufficient * * * to warrant a new trial." *Shelton* v. *Southern Ry. Co.*, 255 Fed. 182, 183 (E. D. Tenn., Judge Sanford).[12] The Circuit Court of

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might be affected by evidence as to the destruction of respondent's property, and that such witnesses testified to facts material to the Board's findings (R. 873–876). As to Marks and Freeman, who allegedly participated in the crimes, the Board did not rely on their testimony or even deem it of sufficient consequence to designate it for printing (see R. 9–18), and a glance at the few pages included in the record by respondent will prove that their testimony was immaterial to any issue in the case (see R. 188–191, 276).

As to Guy, who is not claimed to have engaged in criminal conduct, his testimony (R. 180–182) that two supervisors, in the court's language, "spied upon" (R. 876) a union meeting, was corroborated by the statements of the supervisors themselves (R. 480–481, 576–578) as well as by two other witnesses (R. 277–278, 348–350). Although the court below (R. 876) referred to testimony by Guy and Marks as to a statement by English, respondent's vice-president, the Board did not make a finding as to or in any way rely on such testimony, and the printed record contains no such testimony by Marks at all (R. 188–191). The unimportance of Guy's evidence on this point appears plainly from his testimony (see R. 179–188).

[12] "New trials upon this ground are not favored." *Casey* v. *United States*, 20 F. (2d) 752, 754 (C. C. A. 9), affirmed, 276 U. S. 413. "But as a rule new trials are not granted where the newly discovered evidence is only of an impeaching character." *Slappey* v. *United States*, 110 F. (2d) 528 (C. C. A. 5). Accord, *National Labor Relations Board* v.

Appeals for the Sixth Circuit itself has recognized in other cases that "newly discovered evidence which tends merely to affect the weight and credibility of evidence does not constitute proper basis for a new trial." *Morton Butler Timber Co.* v. *United States*, 91 F. (2d) 884, 893 (C. C. A. 6); *Miller* v. *Commonwealth of Kentucky*, 40 F. (2d) 820, 822 (C. C. A. 6). This rule has special justification where the testimony of the witnesses sought to be impeached has no effect upon the ultimate decision. The Board does not press this point as an additional reason for granting certiorari, but in the event that this petition is granted, it will request the Court to reverse the decision below in this respect also.

5. The court below did not pass upon the merits of the Board's findings and order. In our view the evidence set forth in the Statement in support of the Board's findings is clearly substantial, and the Board's order is proper in all respects. We think that the court below erred in failing to enforce the Board's order upon the record before it. Accordingly, if certiorari is granted, we will re-

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J. S. Popper, Inc., 113 F. (2d) 602, 604 (C. C. A. 3); *United States* v. *Parker*, 103 F. (2d) 857, 863–864 (C. C. A. 3), certiorari denied, 307 U. S. 642; *Lowry* v. *Mt. Adams, etc., Ry. Co.*, 68 Fed. 827, 829 (C. C. S. D. Ohio); *Brooke* v. *Peyton*, 4 Fed. Cas. No. 1934; *Carr* v. *Gale*, 5 Fed. Cas. No. 2433. Cf. *Taylor* v. *United States*, 19 F. (2d) 813, 817 (C. C. A. 8); *Brown* v. *United States*, 32 F. (2d) 953 (App. D. C.).

quest this Court not only to set aside the remand but to enforce the Board's order *in toto*.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

ROBERT B. WATTS,
General Counsel,
National Labor Relations Board.

APRIL 1942.

APPENDIX

1

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

* * * * *

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

* * * * *

SEC. 10. (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *

* * * * *

(e) * * * If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. * * *

Rules and Regulations of the National Labor Relations Board:

ARTICLE II

* * * * *

SECTION 1. A charge that any person is engaged in or is engaging in any unfair labor practice affecting commerce may be made by any person or labor organization. * * *

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